

REMARKS

This responds to the Final Office Action mailed on December 3, 2008.

No claims are amended, no claims are canceled, and no claims are added; such that claims 21 to 45 remain pending in this application.

§103 Rejection of the Claims

Claims 21-45 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Vaidyanathan et al. (U.S. Publication No. 2004/0059596, hereinafter referred to as the Vaidyanathan reference) in view of Campbell (U.S. Publication No. 2001/0041993, hereinafter referred to as the Campbell reference). The Applicants respectfully submit that the sections of the references cited by the Examiner do not render the claims unpatentable. However, upon reflection of the material in the background section of the Vaidyanathan reference, applicants have amended the claims to highlight patentable distinctions of the disclosed system. Since the Examiner did not specifically cite the background section of the Vaidyanathan reference in the Office Action mailed on February 15, 2008 as required by 37 CFR 1.104(c)(2) which states “When a reference is complex or shows or describes inventions other than that claimed by the applicant, **the particular part relied on must be designated as nearly as practicable**”, the applicants respectfully request that the current Office Action dated October 3, 2008 be deemed to be non final.

In the Examiner’s Office Action dated October 3, 2008, the Examiner cited the Vaidyanathan reference as the primary reference. The Vaidyanathan reference discloses an automated online dispute resolution system. The Vaidyanathan reference provides a system for allowing parties of an electronic commerce dispute to select one of two modes of resolving the dispute, the first mode being completely driven by an electronic agent and **the second mode involving a human dispute resolution specialist**. In the Examiner’s rejection, the Examiner cites heavily from portion of the Vaidyanathan reference that requires a human dispute resolution specialist and does not anticipate or render the presently claimed system that operates without any human dispute resolution specialist. Specifically, the claimed system is designed and claimed in a manner to encourage allow transactions participants to resolve their own disputes without the need for any third party.

As set forth in all the pending independent claims of present application, after a complaint has been filed by a first party and the second party has been notified, the two parties of a transaction are allowed to repeatedly view and enter messages on a message board in attempts to resolve a dispute between the two parties. For example, pending independent claim 21 claims a method including a stage of “allowing the first party and the second party to repeatedly view and enter comments about the complaint relating to the network-based transaction on a messaging board”. Such a messaging board environment allows the two parties involved in a dispute to communicate freely with each other but in a manner wherein all the communication is recorded. Messaging boards are very well-known in the field of networked computing such as the Internet’s Usenet messaging board system that goes back to 1980.

In the Examiner’s Office Actions dated February 15, 2008 and October 3, 2008, the Examiner cited the Vaidyanathan reference as teaching “allowing the first party and the second party, without additional prompting, to repeatedly . . . view and enter comments about the complaint relating to the network-based transaction on a messaging board, notification of comments entered by said first or second party is sent to the other party”. The examiner cited paragraphs [0076] to [0078] of the Vaidyanathan reference as providing such a teaching.

Paragraphs [0071] to [0078] of the Vaidyanathan reference state:

[0071] From state 426, if it is determined that the case should go to conciliation, the transition from state 426 to state 414. **From the case-review state 416, if a dispute resolution specialist accepts, the case transitions to a resolution-in-progress state 430.** If sufficient facts exist to pass resolution of the case, the case proceeds from state 430 back to state 420 where it is resolved. Alternatively, if insufficient facts exist to pass resolution, the case proceeds from state 430 to a conciliation state 432.

[0072] **While in conciliation state 432, the specialist exchanges messages with the two parties to try and reach a mediated settlement.** While in the conciliation state 432, if the dispute resolution specialist sends conciliation messages, the case transition to state 434 where it awaits a response. If the parties respond, then the case transitions from state 434 back to state 432. Alternatively, if the parties do not respond within a predetermined period such as 48 hours, the system transitions from state 434 back to state 432.

[0073] If a mediated settlement is reached, the case transitions from the conciliation state 432 to the resolved state 420. Alternatively, while in the conciliation state 432, if the dispute resolution specialist sends conciliation

messages, the system transition to state 434 where it awaits a response. If the parties respond, then the system transitions from state 434 back to state 432. Alternatively, if the parties do not respond in 48 hours, the system also transitions from state 434 back to state 432.

[0074] From state 432, once the dispute resolution specialist decides that conciliation is not possible, the case transitions from the conciliation state 432 to an information-gathering state 436. In state 436, if the specialist decides not to attempt conciliation again, then the case transitions from state 436 back to state 432. Alternatively, if sufficient facts exist to pass resolution, the case proceeds from state 436 back to the resolved state 420. **Further, while in the information gathering state 436, if the dispute resolution specialist requests information or evidence, the case transitions from state 436 to state 438 where the system waits for a response from one of the parties.** If the primary party does not respond within 48 hours, the case transitions from state 438 back to state 436. Alternatively, if the primary party responds, the case transitions from state 438 to state 440 where it awaits a response from a secondary party.

[0075] From state 440, if the secondary party responds, the case transitions from state 440 to state 436. Alternatively, if the secondary party does not respond, the case also moves back to state 436 to continue the information gathering process.

[0076] The evidence collection process discussed above enables the parties to electronically submit photographs (JPEG, GIF file attachments) as well as expert testimonials (scanned and submitted electronically). The system can resolve disputes among multiple parties and allow the additional parties, the complainant, respondent and specialist (e.g. appraiser) to participate in the discovery and evidence submission process.

[0077] Using the above life cycle diagram, an exemplary process for initiating a complaint is discussed next. **First, a complainant submits a complaint.** Upon receipt of a complaint, the system sends an acknowledgment message to the complainant. The acknowledgment can be sent using regular mail, electronic mail, or any other suitable medium. Next, the system sends a notification message to a respondent. The notification can be sent using electronic mail, for example. Next, the system determines whether the respondent has responded within a first predetermined time limit. **If the respondent fails to respond within the first predetermined time period, the system sends a reminder message to the respondent** and notifies the complainant that a delay has occurred.

[0078] The system then waits for a second predetermined delay and checks whether the respondent has responded after the second predetermined period. **If the respondent fails to respond during the second time period, the system sends an urgent reminder or message to the respondent about a possible**

default action against the respondent. Then, the system waits for a third predetermined period. Next, the system checks whether the respondent has responded to the urgent message. If the respondent fails to respond after the expiration of the third time period, the system notifies the respondent of an adverse (default) decision; notifies the complainant of a default victory; and closes the case.

(Emphasis added)

These paragraphs refer to **Figure 7**, which is partially reproduced here:

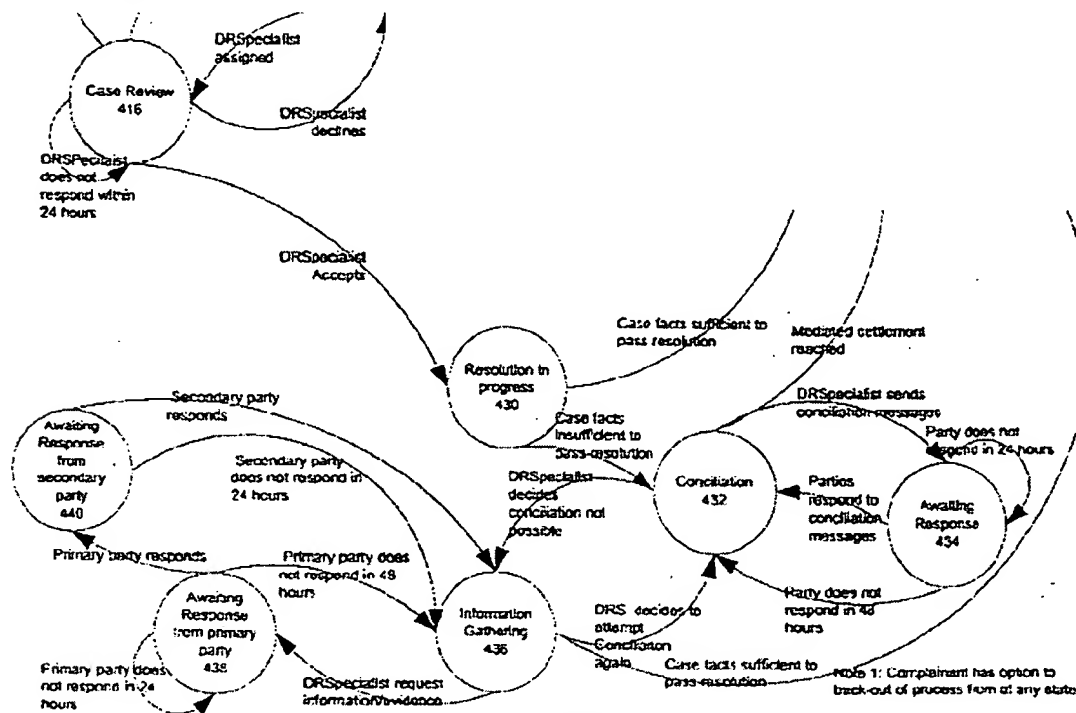


FIG. 7

As set forth in paragraphs [0071] to [0078] and illustrated in **Figure 7**, the communication between the two parties involved in the dispute is only initiated when a dispute resolution specialist initiates a resolution attempt. ("From the case-review state 416, if a dispute resolution specialist accepts, the case transitions to a resolution-in-progress state 430", paragraph [0071]). This is clearly not a messaging board environment. Even more directly, all communication in the system of the Vaidyanathan reference is done with messages sent to the dispute resolution specialist and only at the specific request of the dispute resolution specialist. ("Further, while in the information gathering state 436, if the dispute resolution specialist requests information or evidence, the case transitions from state 436 to state 438 where the system waits for a response

from one of the parties.”, paragraph [0074] and **Figure 7.**) As any user of a computer messaging board knows, this is not how a messaging board environment operates. To better highlight the distinction, the applicants have amended the claims to state that the viewing and entering of comments is allowed “, without additional prompting” (other than notification of comments entered by the other party). Thus, the Vaidyanathan reference fails to disclose or teach toward a system that allows users to “repeatedly view and enter comments about the complaint relating to the network-based transaction on a messaging board” as required by pending claim 21.

In the Examiner’s Final Office Action dated October 3, 2008, the Examiner sustained the rejection citing some additional material from the Vaidyanathan reference. Specifically, the examiner cited paragraphs [0011] and [0056] as corresponding to the claimed feature of “repeatedly view and enter comments about the complaint relating to the network-based transaction on a messaging board”. Applicants respectfully traverse. Paragraph [0011] of the Vaidyanathan reference states:

[0011] Implementations of the above aspect may include one or more of the following features. The selection of the mode includes applying a case-based reasoning system to assist the determination of the modes. The case-based reasoning system can contain a history file. The history file can contain patterns and precedents, which are applied to generate an outcome prediction to assist the determination of the mode. The outcome prediction can be presented to the parties and can include one or more likely outcomes and associated probabilities of occurrence. Settlement positions can be received from the parties. The dispute can be automatically settled if the settlement positions satisfy a predetermined criterion. The predetermined criterion relates to a monetary or a non-monetary settlement position. **The dispute resolution specialist** can resolve the dispute by transitioning from a mediation stage to an arbitration stage. **The dispute resolution specialist** also generates a final recommended resolution that, once accepted by the one or more parties, is recited in a binding contract between the one or more parties stating the willingness to abide by the recommended resolution. The parties can communicate using a plurality of communication modes, including a private mode and a public mode. **The communication mode can be selected by the dispute resolution specialist. The communications between the specialist and the parties** can be kept private or public. Visual cues can be provided to highlight agreements between the parties. A meta-rating forum on the performance of a particular party can be maintained, and the data stored on the forum regarding performances of sellers and buyers can be accessed. The data can relate to participation in the dispute resolution process, or can relate to compliance of a participant to the final decision made in the resolution of the dispute. An offender in the dispute resolution system can be highlighted. A

market-based system can be used for **assigning a specialist** to a particular dispute. The dispute resolution system can be provided as an insurance covering transactions, where a seller in a transaction is a registered subscriber before a transaction is insured. A visual indicia can be used to indicate membership in the dispute resolution process. The visual indicia can be a medallion. The system can emulate a court for on-line transaction parties.

As set forth above, that section heavily involves a dispute resolution specialist (a human) and thus does not allow the two parties to freely communicate on a message board as claimed in the present system. Similarly, paragraph [0056] of the Vaidyanathan reference states:

[0056] After purchase, if the buyer is dissatisfied with the online transaction previously entered into, the buyer can file a complaint if he or she desires. FIG. 6 illustrates a complaint prefiling process. First, a seller or buyer initiates a dispute (step 282). The initiation of the dispute may be accomplished by answering the series of questions posed by the complaint wizard (step 284). The person filing out the form is called a complainant. The complaint wizard 284 tries to determine the nature of the dispute and if it is simple in nature, will offer suggestions for resolving the dispute without involving the dispute resolution system. If the dispute is not so simple in nature or if the complainant decides they want the dispute resolution system to resolve their dispute, the complaint wizard asks a further set of questions to determine the eligibility of the dispute (step 286). In this process, before the system accepts a complaint, two eligibility criteria have to be met: (1) the seller is covered or enrolled in the system; and, (2) the transaction occurred after coverage began. The complaint wizard then guides the complainant by selecting whether the complainant is a buyer or the seller. The complaint wizard 284 also prompts the complainant to enter the other party's user identification number and the date of the transaction, and notifies the user that a particular fee will be charged to resolve the dispute. If the complaint wizard 284 determines that the dispute is not eligible, the complaint wizard 284 displays a message that the system cannot resolve the dispute because the seller is not enrolled in the system or that the transaction occurred before coverage was available (step 288). The wizard 284 then loops back to receive additional disputes from other complainants (step 282).

This section only concerns the initial filing of a complaint and disclosing nothing related to any message board system that allows the two parties to communicate with each other.

However, in paragraph 4(C) of the Examiner's Final Office Action dated October 3, 2008, the Examiner did cite some new text from background of the Vaidyanathan reference. Since the Examiner did not specifically cite the background section of the Vaidyanathan reference in the Office Action mailed on February 15, 2008 as required by 37 CFR 1.104(c)(2),

the applicants respectfully request that the current Office Action dated October 3, 2008 be deemed to be non final. The newly cited paragraph [0008] of the Vaidyanathan reference states:

[0008] A solution disclosed in U.S. Pat. No. 5,895,450 provides a method and apparatus for handling complaints that **allows complainants to lodge anonymous complaints against subjects, informs the subjects of the complaints, permits the subjects to respond to the complaints, encourages settlements of the complaints and holds the parties to the complaints accountable for their conduct while attempting to resolve the complaints. A central computer is programmed to receive complaints and responses, store the complaints and responses in individual data records, and negotiate settlements to the complaints. Once the disputes are resolved, the settlements or judgments are stored along with their respective complaints and responses in the data records.** The central computer is also programmed to provide public access to the data records to permit viewing of the corresponding complaints, responses, and settlements for allowing other users to gauge the conduct of the subjects and to encourage the subjects to respond to the complaints in a timely and satisfactory manner. Moreover, the central computer is programmed to monitor and rate the conduct and performance of both the complainants and the subjects during the course of the disputes. The ratings can be used to affect the outcome of the disputes and for other purposes to hold the parties accountable for their conduct during the attempted resolution of the disputes to encourage good conduct and cooperation between the parties during the course of the disputes.

This section seems to be closer to the claimed system. However, the cited system allows for **anonymous** complaints to be submitted. The presently claimed system is instead for two identified parties involved in a specific transaction. Specifically, the presently claimed system requires that the two parties “authenticate to the network-based facility as said first party or second party to said transaction,” before they are allowed to “view and enter comments about the complaint relating to the network-based transaction on a messaging board”. Thus, the presently claimed system that requires participants to authentic as being involved in a specific transaction is patentably distinct from the system disclosed in paragraph [0008].

As set forth above, the Vaidyanathan reference fails to disclose an automated dispute resolution system that encourages users to resolve their dispute without the use of any human dispute resolution specialist. Specifically, the claimed system allows transaction participants to work out their dispute by being able to “allowing the first party and the second party, without additional prompting, to repeatedly . . . view and enter comments about the complaint relating to the network-based transaction on a messaging board, notification of comments entered by said

first or second party is sent to the other party;" Thus, the Vaidyanathan teaching with its system that requires a dispute resolution specialist, requires requests from a dispute resolution specialist to obtain additional information, and requires all communication to occur through the dispute resolution specialist; the system of the Vaidyanathan reference does not render obvious the messaging board-centric system as claimed in all the pending independent claims.

The Examiner cited a new section from the Vaidyanathan reference that is vaguely similar to the claimed system. However, that system was geared toward anonymous complaints whereas the presently claimed system is completely opposite since it requires that the parties "authenticate to the network-based facility as said first party or second party to said transaction," before being able to view comments or enter new comments related to the dispute. Thus, the Applicants submit that the present claims are allowable.

CONCLUSION

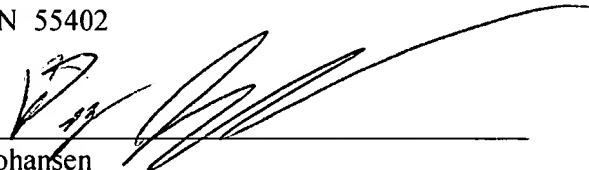
Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney at 408-278-4058 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
408-278-4058

Date 12/3/08

By 
Dag H Johansen
Reg. No. 36,172

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 3rd day of December, 2008.
Dag Johansen

Name Dag Johansen

Signature 